

AUG 10 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN MITCHELL,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA;  
UNITED STATES DEPARTMENT OF  
DEFENSE; UNITED STATES  
DEPARTMENT OF THE ARMY,

Defendants - Appellees.

No. 08-35608

D.C. No. 3:05-CV-00264-JWS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Alaska  
John W. Sedwick, Chief District Judge, Presiding

Submitted August 5, 2009<sup>\*\*</sup>  
Anchorage, Alaska

Before: FARRIS, THOMPSON and RAWLINSON, Circuit Judges.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

John Mitchell (“Mitchell”) appeals the district court’s denial of his motion to reopen his case or vacate and reenter judgment to allow a timely appeal to this court. The district court entered judgment against Mitchell after he failed to oppose the government’s motion to dismiss, or alternatively, its motion for summary judgment. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

The district court did not abuse its discretion in determining Mitchell is not entitled to a reopening of the case under Federal Rule of Appellate Procedure 4(a). Mitchell’s attorney of record received electronic notice of the entry of judgment against him the day the judgment was entered. *See* Fed. R. App. P. 4(a)(6)(A). The district court’s notice of electronic service of the judgment on Mitchell’s counsel at the e-mail address he registered with the court establishes that he received proper service. Fed. R. Civ. P. 77(d)(1); D.Ak.LR 5.2(c)(2).

The district court properly determined Federal Rule of Civil Procedure 60(b)(1) does not apply here because Federal Rule of Appellate Procedure 4(a) is the exclusive relief for an untimely appeal based on lack of notice. *In re Stein*, 197 F.3d 421, 425 (9th Cir. 2000).

**AFFIRMED.**